No. 83-2102

In the Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF TEXAS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals applied an improper standard in upholding Section 214 of the Staggers Rail Act of 1980, 49 U.S.C. 11501, as a proper exercise of Commerce Clause authority.

2. Whether pre-emption of state authority to regulate rail operations affecting interstate commerce violates the Tenth Amendment doctrine of intergovernmental immunity.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A30) is reported at 730 F.2d 339. The judgment order of the district court is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. D1-D2) was entered on April 23, 1984. The petition for a writ of certiorari was filed on June 21, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT

1. The Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 *et seq.*, was the culmination of congressional efforts in the latter half of the 1970's to restore economic vitality to the nation's railroads by generally deregulating rate setting for interstate carriers. Briefly, with respect to interstate rates, carriers were freed to set their own rates without regulation, subject to the requirement that a carrier that dominates a particular traffic market must, if challenged, justify as reasonable any rate change that goes beyond a degree of rate flexibility automatically sanctioned by the Act. Sections 201-203, 49 U.S.C. 10701a, 10707a, and 10709(d). In addition, in Section 214 of the Staggers Rail Act, 49 U.S.C. 11501, Congress undertook to restructure the pre-existing system of dual federal and state regulation of intrastate rates. Section 214 pre-empts state authority to regulate adjustments in intrastate rates that are an integral part of general regional or national rate increases, inflation-based increases, or fuel cost adjustment surcharges. 49 U.S.C. 11501(b)(6). Other intrastate rate adjustments may be regulated by any state that wishes to exercise such authority, providing that the state's standards and procedures are certified by the Interstate Commerce Commission to conform to those of the Interstate Commerce Act. 49 U.S.C. 11501(b)(1)-(3), (4)(A).

2. Petitioners filed this action in the United States District Court for the Western District of Texas, challenging the constitutionality of Sections 201-203 and 214 of the Staggers Rail Act, arguing that the latter provision exceeds Congress's commerce power and violates the Tenth Amendment and the Guaranty Clause, and that the former sections effect a

taking of property without just compensation or due process of law. The district court entered judgment upholding the challenged provisions of the Staggers Rail Act, but did not issue any opinion.

The court of appeals affirmed. The court initially held that Section 214 of the Staggers Rail Act was a proper exercise of Congress's authority under the Commerce Clause (Pet. App. A10-A17). The court noted that the information presented to Congress during its consideration of the Staggers Rail Act provided a clear indication that the then-existing system of dual state and federal regulation of the interstate rates of interstate carriers imposed a substantial burden upon those carriers to the detriment of interstate commerce. It accordingly concluded that there is a "rational basis for the congressional finding of a substantial effect upon interstate commerce" (*id.* at A11). The mechanism chosen by Congress to eliminate this clog on commerce—pre-emption of state regulation that deviates from the policies of federal rate regulation—was also found to be a reasonable means of achieving the desired end. Section 214 accordingly passes muster under "accepted commerce clause reasoning," the court held. *Ibid.*

The court of appeals also rejected petitioners' arguments that this conventional analysis should not be applied in this case—*i.e.*, that, in the circumstances, there must be a more exacting scrutiny of the appropriateness of the means chosen to accomplish Congress's purposes (Pet. App. A11-A17). The court first observed that the intrastate location of regulated activities is no longer regarded as a controlling consideration in determining whether regulatory legislation falls within the scope of the commerce power, and that Congress is not limited in regulating intra-

state activities to the direct protection of interstate activities from unreasonable burdens. The court also noted that courts are ill-equipped to decide whether the needs of interstate commerce uniquely justify particular legislative choices. By contrast, the conventional focus of judicial review in this sphere—the ascertainment of whether a rational basis exists for application of commerce power and the particular means chosen—is within the institutional competence of the courts.

Second, the court of appeals held that considerations of federalism respecting federal regulation of private commerce are properly taken into account by the rule of statutory construction that recognizes federal pre-emption of state authority in areas historically regulated by the States only when Congress clearly intended to displace state law. But when the intent to pre-empt is clear, the Supremacy Clause and the plenary nature of the commerce power preclude use of any balancing test in assessing the validity, under the Commerce Clause, of pre-emptive legislation regulating private commerce, the court explained. Third, the court of appeals rejected as inconsistent with settled law petitioner's contention that the limited scrutiny conventionally employed in commerce power cases should be confined to instances in which the commerce power is employed to protect civil rights.

Petitioners' Tenth Amendment argument was rejected (Pet. App. A17-A28) because Section 214 of the Staggers Rail Act, like the provisions of the Surface Mining Act upheld against a similar challenge in *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264 (1981), does not "regulate[] 'the 'States as States'" (*id.* at 287, quoting *National League of Cities* v. *Usery*, 426 U.S. 833, 854 (1976)).

The court noted that Section 214 of the Staggers Rail Act is concerned, in substance, with the direct regulation of private commerce. Insofar as it affects the States, it merely offers them the choice of regulating intrastate rail rates in a manner consistent with federal policy or of allowing the federal government to occupy the field alone. The court explained that, assuming the Tenth Amendment immunity doctrine is aimed at preserving clear lines of political accountability (as petitioners had argued), it was permissible to offer the States this choice, for the States could in no event be held accountable for decisions that they had no opportunity to avoid (Pet. App. A21-A23). Absent application of any legal compulsion to the States, affording them the opportunity to assist in the implementation of federal policy does not endanger the vitality of the federal system, the court concluded (Pet. App. A25, A27).

The court of appeals also rejected petitioners' argument, predicated on the Guaranty Clause, that the pre-emptive effect of the Staggers Rail Act impermissibly transfers authority from elected state officials to appointed federal officials, noting that this argument would make it possible for the states to destroy the ability of Congress to pre-empt state law (Pet. App. A28). In addition, the court rejected petitioners' Fifth Amendment challenge to Sections 201-203 of the Staggers Rail Act.[1] The court noted that the Act was challenged on its face, without any showing that it impermissibly diminished the property rights of any particular person, and that the mere enactment of the Staggers Rail Act was not alleged to have denied petitioners—or anyone else—all economic use of their property. Pet. App. A29.

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[1] This challenge has not been renewed in this Court.

ARGUMENT

The decision of the court of appeals is clearly correct. The exhaustive opinion of the court of appeals, on which we rely, carefully demonstrates that each of petitioners' contentions is contrary to settled teaching of this Court.

1. Petitioners' initial contention (Pet. 4-7; see also *id.* at 7-9) is difficult to comprehend. As we understand it, petitioners' claim is that, in holding Section 214 of the Staggers Rail Act to be a proper exercise of Congress's Commerce Clause authority, the court of appeals improperly relied upon an excessively deferential "rational basis test" said to be appropriate only for determining whether Congress has properly exercised its authority under Section 5 of the Fourteenth Amendment to enforce the rights of individuals protected by that Amendment. This claim is wholly without foundation.

The rational basis test applied by the court of appeals in the Commerce Clause branch of its opinion simply reflects the deference that is due to Congress's findings that an activity it has determined to regulate substantially affects interstate commerce (Pet. App. A10). This test is firmly rooted in this Court's commerce power jurisprudence. See, *e.g.*, *FERC* v. *Mississippi*, 456 U.S. 742, 753-754 (1982); *Hodel* v. *Indiana*, 452 U.S. 314, 323-324 (1981). Petitioners' contrary argument seems to rest, in large measure, upon the source of this formulation—the Court's opinion in *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 258 (1964). Presumably because the issue in that case concerned the validity of the public accommodations provisions of the Civil Rights Act of 1964, petitioner asserts, ipse dixit, that *Heart of Atlanta Motel* "appl[ied] the

'rational basis' analysis of the Fourteenth Amendment" (Pet. 6).

Petitioners' assertion is simply frivolous. The holding of *Heart of Atlanta Motel* could not be more explicit: "[T]he action of the Congress in the adoption of the [Civil Rights] Act [of 1964] as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years." 379 U.S. at 261. The United States did not seek to defend the challenged statutory provisions as legislation enforcing the Fourteenth Amendment (see 379 U.S. at 244) and the Court did not rest its decision in any respect upon the Fourteenth Amendment. Indeed, the concurring opinion of Justice Black notes that there had been no suggestion that the racially discriminatory practices of the establishments that challenged the public accommodations law reflected state action and "no contention * * * that Congress relied on the fifth section of the Fourteenth Amendment" in enacting the law (379 U.S. at 270 & n.3). Moreover, Justice Douglas wrote separately as well urging that in addition to the Commerce Clause rationale embraced by the Court, the statute could also be upheld under Section 5 of the Fourteenth Amendment (379 U.S. at 279-280). Thus *Heart of Atlanta Motel* cannot be read to embody a special rule applicable only to legislation resting on the Fourteenth Amendment or to Commerce Clause legislation that serves to advance the policies of that Amendment.[2]

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[2] It does not help petitioners to observe (Pet. 5) that Congress need not explicitly invoke a particular constitutional grant of authority in order to avail itself of that authority. *Heart of Atlanta Motel* makes clear that *this Court* held the

2a. Petitioners' challenge (Pet. 7-17) to the court of appeals' Tenth Amendment ruling is of a kind with their Commerce Clause argument. It is again said that this Court and the court of appeals have impermissibly used "Fourteenth Amendment analysis" (see Pet. 8-9) and that both have failed to recognize that federal legislation that directly regulates private commerce and simultaneously pre-empts state regulation intrudes impermissibly upon state sovereignty and should be deemed federal regulation of the States themselves. See Pet. 9-11. Petitioners urge the Court to adopt a "flexible balancing process" in order to resolve the competing claims of the States and the United States to regulate private commerce (Pet. 11).

The court of appeals properly rejected this contention (Pet. App. A15-A16 & n.21). As the court of appeals observed (Pet. App. A25-A26), this Court has repeatedly held that the intergovernmental immunity doctrine of *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), does not limit federal power to pre-empt state law regulating private commerce; that doctrine rests securely upon the unequivocal command of the Supremacy Clause. See *EEOC* v. *Wyoming*, 460 U.S. 226, 237 n.10 (1983); *FERC* v. *Mississippi*, 456 U.S. 742, 759 (1982); *Virginia Surface Mining*, 452 U.S. at 286, 289-291; *National*

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public accommodation provisions of the Civil Rights Act of 1964 to be a proper exercise of commerce power, without regard to any other grant of legislative authority that might apply. Accordingly, even if the result in *Heart of Atlanta Motel* could have been reached by another route, that was not done, and the Court's decision is properly cited as precedent bearing upon the scope of the commerce power. Of course, the Court has repeatedly done just that.

League of Cities, 426 U.S. at 840, 844-845, 854. Petitioners have provided no reason to reconsider this settled principle in this case.[3]

b. Petitioners' effort to distinguish this case from *Virginia Surface Mining* and *FERC* v. *Mississippi* (Pet. 14-15) is unavailing. Petitioners claim, essentially, that the Staggers Rail Act affords the states less latitude than did the statutes involved in those cases as to the substantive law to be applied by state officials if they elect to participate in the federal regulatory scheme. Assuming that this is true—which, as the court of appeals noted (Pet. App. A7-A8 n.14), is uncertain—it is of no moment in the pertinent constitutional analysis. *Virginia Surface Mining* makes clear that Congress is free to prohibit all state regulation of intrastate activities that affect interstate commerce, and that Congress may accordingly allow the States the choice of participating in the implementation of a federal regulatory scheme instead of quitting the field entirely. 452 U.S. at 290-291. Petitioners point (Pet. 14) to language in *Virginia Surface Mining* that alludes to the possi-

[3] We do not believe that it is necessary or appropriate to hold this case for disposition in light of *Garcia* v. *San Antonio Mass Transit Authority*, No. 82-1913, in which the Court has asked the parties to address the question whether the Tenth Amendment doctrine of *National League of Cities* should be reconsidered. It does not appear that any of the parties to *San Antonio* will advocate dispensing with the "States as States" prong of the *Virginia Surface Mining* formulation of the intergovernmental immunity test; *San Antonio* provides no occasion for the Court to address that issue. Moreover, the rule that federal regulation of private commerce that preempts parallel state regulation raises no state immunity issues has commanded unanimous assent among the Members of the Court, and it is accordingly highly unlikely that it will be called in question in *San Antonio*.

bility that participation in the administration of the federal scheme could be beneficial for a state (see 452 U.S. at 289). But the result in that case does not rest upon any such subjective assessment; it follows from the legal rule we have identified: that Congress's power entirely to prohibit state regulation of commerce in a given field necessarily comprehends the power to condition the States' continued participation in the field on their adherence to federal standards.

Petitioners also argue that the pre-emption of state law effected through the Staggers Rail Act impermissibly supplants the decisions of elected state officials with those of appointed federal administrators, and effectively disenfranchises Texas voters (Pet. 14-15). Petitioners' argument cannot be squared with this Court's rejection of the contention that regulations duly promulgated by federal administrators acting within the authority delegated by Congress to implement federal statutes are less effective to pre-empt state law than the federal statutes themselves. *Fidelity Federal Savings & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153-154 (1982). Nor are the acts of federal appointees, appointed by the President and subject to confirmation by Congress, in any relevant sense insulated from the democratic political process. See *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, No. 82-1005 (June 25, 1984), slip op. 27.[4]

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[4] Although petitioners list among the questions presented the issue whether Section 214 of the Staggers Rail Act violates the Guaranty Clause (see Pet. i), no argument addressing this point is contained in the petition. The arguments addressed in the accompanying text are those advanced in support of the Guaranty Clause argument in the court of appeals. We note that this Court has treated claims under the Guaranty Clause as nonjusticiable. See *Baker* v. *Carr*, 369 U.S. 186, 224 (1962).

Petitioners argue (Pet. 16-17), finally, that, to the extent that elimination of burdensome dual state and federal regulation of interstate rail carriers was based upon Congress's conclusion that such action was needed to restore vitality to carriers in economic difficulty, Congress's action was unnecessary as to Texas railroads, which, petitioners claim, are experiencing prosperity without regard to the reforms of the Staggers Rail Act.[5] But plainly Congress was entitled to prescribe a uniform national scheme based upon its assessment of the needs of rail commerce generally, without crafting legislative instruments that single out particular states for special treatment. See *United Transportation Union* v. *Long Island R.R.*, 455 U.S. 678, 689 (1982); *Hodel* v. *Indiana*, 452 U.S. at 332. In any event, because Section 214 of the Staggers Rail Act simply does not regulate the States, its constitutional validity does not depend upon any conclusion that the federal interest in enforcing the particular scheme designed by Congress outweighs an identified interference with state sovereignty. Compare *National League of Cities*, 426 U.S. at 853 (distinguishing *Fry* v. *United States*, 421 U.S. 542 (1975)). Thus, as under the Commerce Clause generally, it is irrelevant here that "Congress could have

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In any event, petitioner has not suggested any respect in which the analysis pertinent to any Guaranty Clause claim would differ from that under the doctrine of intergovernmental immunity associated with the Tenth Amendment.

[5] Ironically, the petitioners ascribe this prosperity to the revenues garnered by railroads that operate in Texas from *interstate* coal movements. The interdependence of intrastate and interstate rail operations suggested by this example illustrates why Congress was free to determine that balkanization of authority to regulate the rates of interstate carriers is antithetical to the interests of commerce.

pursued other methods to eliminate the obstructions it found in interstate commerce" (*Heart of Atlanta Motel*, 379 U.S. at 261), for the choice of means is a "matter of policy that rests entirely with the Congress not with the courts" (*ibid.*).

CONCLUSION

The petition for a writ of certiorari should be denied.

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